

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCUS HARRISON,

Plaintiff,

v.

E. SMITH,

Defendant.

No. C 08-4123 SI (pr)

**ORDER DENYING
PLAINTIFF'S MOTION TO
VACATE JUDGMENT**

This is a civil rights case filed pro se by a state prisoner. Plaintiff claimed that defendant, a correctional officer, retaliated against him in several ways for his having filed a lawsuit against another correctional officer. Defendant filed a combined motion to dismiss and for summary judgment. The court concluded that plaintiff had not exhausted his administrative remedies and that there was no genuine issue of material fact as to retaliatory motive, and granted the motion. Judgment was entered in favor of defendant.

Plaintiff has moved to vacate the judgment, contending that the court erred in concluding that he had not exhausted his administrative remedies. See Fed. R. Civ. P. 60(b)(1) (providing that judgment may be vacated on grounds of "mistake, inadvertence, surprise or excusable neglect."). He does not challenge the court's ruling on the motion for summary judgment.

In his motion plaintiff merely reargues a contention he made in opposition to the motion to dismiss, that he had been told he could not proceed further with his grievance, and that he thus had exhausted such remedies as were "available." The court rejected that argument in the ruling, concluding that on the undisputed facts the grievance had been divided into two parts, one of which related to supplies and was cancelled and thus not further appealable, and the other of

1 which plaintiff could have appealed but did not. There is nothing new in the motion that shows
2 mistake as to that point. But in any event, the ruling on the motion for summary judgment,
3 which plaintiff does not challenge, is sufficient to support the judgment. The motion to vacate
4 (document no. 36) is **DENIED**.

5 IT IS SO ORDERED.

6 Dated: December 7, 2011 .



SUSAN ILLSTON
United States District Judge